

### **Remarks/Arguments**

Claims 12 to 29, 31, 33 to 35 and 37 to 47 are pending in the application. Claims 12 and 40 have been amended. Claims 15, 18, 19, 28, 29, 31, 33 to 35 and 37 to 48 have been withdrawn from consideration.

Claim 12 has been amended to recite that the rims of both openings of each perforation is flat and in the plan of the associated surface of the film (to be the pre-cut plastic layer). The paragraph previously inserted on page 3, line 31, has been amended in the same manner. Support is found in Figure 1.

Restriction to one of the following inventions has been required under 35 U.S.C. 121:

- I. Claims 12 to 27, drawn to a process.
- II. Claims 28, 29, 31, 33 to 35 and 37 to 47, drawn to a product.

The Office Action stated that the inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process claimed can be used to make other materially different product or, (2) that the product as claimed can be made by another and materially different process [MPEP § 806.05(f)]. In the instant case the product as claimed can be made by another and materially different process such as not cutting the perforations completely through the film.

The Office Action stated that, because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by

their different classification, restriction for examination purposes as indicated is proper.

The Office Action stated that this application contains claims directed to the following patentably distinct species of the claimed invention: Species 1: Claim 14 directed to a process step wherein the perforations are cut before coating the film with adhesive. Species 2: Claim 15 directed to a process step wherein the perforations are cut after coating the film with adhesive.

The Office Action stated that applicants are required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claims is finally held to be allowable. The Office Action stated that, currently, no allowable claim is generic.

The Office Action stated: that applicants are advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added; and that an argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The Office Action stated: that, upon the allowance of a generic claim, applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141; and that, if claims are added after the election, applicants must indicate which are readable upon the elected species.

The Office Action stated: that. during a telephone conversation with Mrs. Armstrong on 11/24/03 a provisional election was made without traverse to prosecute the invention of Group I, Claims 12 to 27, and Species 1; and that affirmation of this election must be made by applicants in replying to this Office Action. Applicants affirm their election of the invention of Group I, Claims 12 to 27. Applicants also affirm their election of Species I, Claim 15 and Claims 28 and 29.

The Office Action stated that Claims 15, 18, 19, 28, 29, 31, 33 to 35 and 37 to 47 have been withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The Office Action stated that the 35 U.S.C. 103 rejection of Claims 14, 16, 17 and 38 over Olivieri et al. in view of Heilmann et al. made of record in Paragraph 2 of Paper 7 has been withdrawn due to applicants' amendment in Paper 14.

The Office Action stated that the 35 U.S.C. 102 rejection of Claims 12, 13, 15, 18, 19, 23 to 29, 31, 33 to 35, 37, 39, 41 and 42 as being anticipated by Olivieri et al. made of record in Paragraph 1 of Paper 7 has been withdrawn due to applicants' amendment in Paper 14.

The Office Action stated that the 35 U.S.C. 103 rejections of Claims 20, 22 and 40 over Olivieri et al. in view of Schlaeppi et al. made of record in Paragraph 3 of Paper 7 has been withdrawn due to applicants' amendment in Paper 14.

Claim 40 has been objected to because of the following informality: Claim 40 is dependent on canceled Claim 10. The Office Action stated that appropriate

correction is required. Applicants have corrected the dependency. Applicants note that Claim 40 is a nonelected claim.

This rejection will be withdrawn.

Claims 12 to 14, 20 and 27 have been rejected under 35 U.S.C. 102(b) as being anticipated by Schlaeppi et al. (European Published Patent Application No. 0596747). Applicants traverse this rejection.

Claim 12 requires the process steps of "providing a notch for initiating tearing in the region of the perforations." Schlaeppi et al. does not teach providing a notch so Schlaeppi et al. does not anticipate any of applicants' claims.

Column 1, lines 4 to 57, of Schlaeppi et al. describes the prior art that the invention of Schlaeppi et al., and the problems of such prior art, that Schlaeppi et al. seeks to overcome. The portions of Schlaeppi et al. that deal with the Schlaeppi et al. invention do not disclose inclusion of a tear notch. The invention of Schlaeppi et al. does not include a tear notch. Schlaeppi et al. discloses an invention that seeks to overcome and avoid the prior art approaches and problems disclosed in column 1 of Schlaeppi et al. The Examiner has made the basic error of trying to include the prior art, that is, a tear notch, in the invention of Schlaeppi et al. where the Schlaeppi et al. invention excludes the tear notches, and their problems, of the prior art. The Examiner's incorrect attempt to include a tear notch in the Schlaeppi et al. invention would destroy the Schlaeppi et al. invention as Schlaeppi et al. states that tear notches cause problems that the Schlaeppi et al. invention seeks to avoid. In essence, the Examiner has distorted the disclosure of Schlaeppi et al. in the Examiner's incorrect attempt to insert into the Schlaeppi et

al. invention which Schlaeppi et al. has excluded because such creates problems that the Schlaeppi invention avoids.

Anticipation cannot be shown by distorting a patent's disclosure and seeking to include that which an invention avoids and excludes.

The prior art portion of Schlaeppi et al. states:

“There are several ways in which to initiate such a tear, such as by the inclusion of tear notches, edge perforations, serrations in the seals, tear strips and laser etchings. Most of these methods fully penetrate the film thickness and are limited to providing tear lines in the sealed area. Often, tear notches end up in the area of the product receiving chamber due to manufacturing malfunctions. This results in the package's integrity being compromised and product spoilage and/or leakage occurring.” [Emphasis supplied] [Column 1, lines 10 to 19]

The Office Action stated that Schlaeppi et al. discloses a process comprising manufacturing a multilayer packaging film for a packaging (col. 3, lines 5 to 13) having at least one line of perforations (Figure 1, 8a) that are provided in a plastic surface layer of the packaging (col. 4, lines 15 to 40) and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (col. 3, lines 2 to 4), including cutting the perforations completely through a film that is to be the precut plastic layer (col. 2, lines 56 and 57), each at least one line of perforation extending from edge to edge of the multilayer packaging film (Figure 1, 8a) and joining the precut film to the other layers to provide the multilayer packaging film (col. 3, lines 12 and 13), and providing a

notch for initiating tearing in the region of the perforations (col. 1, lines 10 and 11), the packaging being easy to open by means of the tear line (col. 1, line 5).

Applicants traverse this statement. Nowhere does Schlaeppi et al. disclose that its invention was to include a tear notch, and, in fact, Schlaeppi et al. (via its prior art section) excludes tear notches because of the stated problems associated with them.

The prior art disclosed by Schlaeppi et al. is not part of the invention of Schlaeppi et al. What Schlaeppi et al. discloses is to not include a tear notch, so Schlaeppi et al. teaches the exact opposite of what the Examiner has incorrectly asserted.

The Office Action stated: Schlaeppi et al. discloses that the precut plastic layers is joined to the other layers by means of an adhesive layer to make up a composite film (col. 4, lines 19 and 20); that Schlaeppi et al. discloses that the perforations are cut before coating the film with adhesive (col. 4, lines 15 to 17); that Schlaeppi et al. discloses that the two lines of perforations are cut parallel or substantially parallel to each other (Figure 1, 8a and 8c) and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (col. 3, lines 1 to 4); that Schlaeppi et al. discloses that the packaging film is employed for the production of pouch forms of packaging (col. 2, lines 29 to 30); and that Schlaeppi et al. teaches that the film is joined to the other layers by means of extrusion to make up a composite film (col. 4, lines 20 and 21). None of this overcomes the fact that Schlaeppi et al. does not anticipate applicants' claimed invention.

This rejection should be withdrawn.

Claims 12 to 14, 16, 17 and 23 to 27 have been rejected under 35 U.S.C. 102(e) as being unpatentable over Olivieri et al. (U.S. Patent No. 6,427,420). Applicants traverse this rejection.

Claim 12 requires that perforations be cut completely through the film (that is to be the pre-cut plastic layer) in such a manner that the rim around each of both openings of each perforations is flat and in the plane of the associated surface of the film. This feature/limitation is not taught by Olivieri et al. so Olivieri et al. does not anticipate any of applicants' claims. Figure 7 of Olivieri et al. shows that the rim around its perforations 14 are not flat and do not lie in the plane of the outer surface of lower film layer 12.

The Office Action stated: that Olivieri et al. discloses a process comprising manufacturing a multilayer packaging film for a packaging (col. 1, lines 6 and 7) having at least one line of perforations (Figure 8a, number 433) that are provided in a plastic surface layer of the packaging (col. 2, lines 58 to 68; Figure 8, number 433) and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (col. 8, lines 65 to 75), including cutting the perforations completely through a film that is to be the precut plastic layer (col. 7, lines 35 to 39), each at least one line of perforation extending from edge to edge of the multilayer packaging film (col. 10, lines 30 and 31) and joining the precut film to the other layers to provide the multilayer packaging film (col. 10, lines 17 to 20), and providing a notch for initiating tearing in the region of the perforations (Figure 9a, number 431), the packaging being easy to open by means of the tear line (col.

2, lines 53 and 54); that Olivieri et al. discloses that the precut plastic layer is joined to the other layers by means of an adhesive layer to make up a composite film (col. 10 lines 17 to 20); that Olivieri et al. discloses that the perforations are cut before coating the film with adhesive (col. 10, lines 14 to 16); that Olivieri et al. discloses that the two lines of perforations are cut parallel or substantially parallel to each other (Figure 9a, number 433 and 432) and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (Figure 9a, number 433 and 432) and a notch is situated between the two lines of perforations (Figure 9a, number 431); and that Olivieri et al. discloses that the packaging film is employed for the production of pouch forms of packaging (col. 1, line 22). Applicants traverse this statement, which is factually incorrect and does not provide anticipation.

The Olivieri et al. invention is limited to the use of a laser beam to precut perforations in a film that is to form the inner face layer of its multilayer film. The operation of laser in Olivieri et al. is obviously done in a manner where the rims of the resultant perforations are not flat and do not lie in the plane of the to-be outer surface of the lower film layer. Accordingly, Olivieri et al. does not teach (anticipate) applicants' Claim 12.

This rejection should be withdrawn.

Claim 16, 17 and 21 to 26 have been rejected under 35 U.S.C. 103(a) as being anticipated over Schlaeppli et al. in view of Olivieri et al. (U.S. Patent No. 6,427,420). Applicants traverse this rejection.



The Examiner has not factually provided in the record a prima facie showing of obviousness of any of applicants' claims. In fact, the Examiner's incorrect attempted combination of rejection references shows the unobviousness of applicants' claims.

Schlaeppli et al. does not disclose use of a tear notch in its invention, and, in fact, excludes a tear notch from its invention. The prior art section of Schlaeppli et al. states that tear notches cause serious problems and malfunctions of the packages. A purpose of the Schlaeppli et al. invention is to avoid the problems caused by prior art notches. The Examiner's incorrect attempt to include the prior art notches in the Schlaeppli et al. invention would destroy the very invention taught by Schlaeppli et al.

When the Examiner tries to combine Schlaeppli et al. and Olivieri et al., the same result occurs of the unjustifiable destruction of the very invention taught by Schlaeppli et al. Since Schlaeppli et al. avoids inclusion of prior art tear notches because of known problems with them, the Examiner has no basis for including tear notches in Schlaeppli et al. even when Olivieri et al. uses tear notches. The result directs one ordinarily skilled in the art away from the use of tear notches and away from applicants' claimed invention.

Furthermore, the Examiner cannot correctly base an obviousness rejection on conflicting and contradictory facts (although this is not even what is present, since the Schlaeppli et al. invention excludes tear notches). The Examiner cannot correctly mangle a prior patent in a manner that destroys its very invention in an attempt to change it for use in an obviousness rejection.

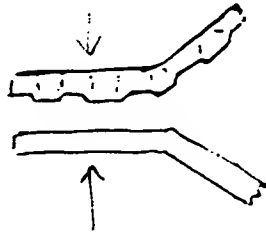
The Office Action stated that Schlaeppi et al. discloses the process comprising manufacturing a multilayer packaging film described above. Applicants traverse this statement. The product of Schlaeppi et al. does not have any tear notches and Schlaeppi et al. judiciously avoids them for the problems associated therewith as stated in the prior art section thereof. Schlaeppi et al. directs away from applicants' claimed invention.

The Office Action stated that Schlaeppi et al. fails to disclose that the notch is situated between the two lines of perforations. Applicants traverse this statement. Schlaeppi et al. excludes tear notches.

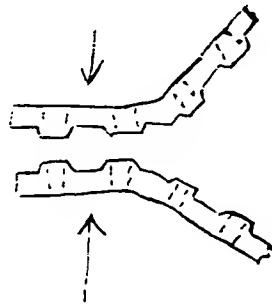
The Office Action stated that Olivieri et al. teaches that the notch is situated between the two lines of perforations (Figure 8a, number 431) for the purpose of tearing the materials forming the pack (col. 8, lines 57 and 58). It does not matter what Olivieri et al. teaches about tear notches because Schlaeppi et al. teaches not to use tear notches.

Olivieri et al. uses a laser to cut perforations in a film to be used in its multilayer film. Figure 7 of Olivieri et al. shows that the Olivieri et al. use of lasers for perforation cutting was done in a manner that resulted in rims around the openings of the perforations (from the laser side) that were not flat and were not in the plane of the associated surface of the film. The result was lines of perforations having protruding rims [having profiles like volcano cones (or volcano apexes)]. These lines of protrusions located on the inside of the Olivieri et al. packaging presents serious problems. The lines of protruding perforations of Olivieri et al.

extend into the areas of the side seals of its packaging, thereby causing possible areas that are not sealed and provide leakage areas (with package malfunction):



The problem is even worse than the above with Olivieri et al. because Olivieri et al. uses two facing side film in forming its packages, so the result is two inner surfaces with facing lines of protruding perforations in the side seal areas:



Applicants' claimed method does not produce packages having such problem.

Oliveri et al. does not recognize such problem and does not correct it. Olivieri et al. also directs one ordinarily skilled in the art away from applicants' claimed process.

The combination of Schlaeppi et al. and Oliveri et al. does not result in applicants' claimed process. The Examiner has not factually shown that one ordinarily skilled in the art would combine the two rejection references in the search for applicants' claimed invention.

The Office Action stated that, therefore, it would have been obvious to one having ordinary skill in the art at the time applicants' invention was made to provide Schlaeppi et al. with the notch that is situated between the two lines of perforations in order to tear the materials forming the pack (col. 8, lines 57 and 58) as taught by Olivieri et al. Applicants traverse this statement for the reasons above. The Examiner's assertion is in error in fact and law. The Examiner has not factually established in the record a prima facie showing of obviousness. Even if such was established, applicants have factually rebutted it.

This rejection should be withdrawn.

Claims 20 to 22 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Olivieri et al. in view of Schlaeppi et al. (0596747). Applicants traverse this rejection. The above showings on both rejection references are incorporated herein.

The Office Action stated that Olivieri et al. discloses the process comprising manufacturing a multilayer packaging film described above. Applicants traverse this rejection. The process of Olivieri et al. is different and provides different structure and results, namely, Olivieri et al. provides packages with potential problems not present with the packages produced by applicants' process. Olivieri et al. uses lasers to perforate in a manner that provides perforation openings (on the laser side) that have an elevated rim, with the possible side seal leakage problem resulting therefrom.

The Office Action stated that Olivieri et al. fails to disclose that the film is joined to the other layers by means of extrusion to make up a composite film.

The Office Action stated that Schlaeppi et al. teaches that the film is joined to the other layers by means of extrusion to make up a composite film (col. 4 lines 20 to 21) for the purpose of securing the inner and outer layers together (col. 4, lines 19 to 20). Schlaeppi et al. directs away from the inclusion of any notches in its packages, hence, away from combination with Olivieri et al. and away from applicants' claimed process.

The Office Action stated that, therefore, it would have been obvious to one having ordinary skill in the art at the time the applicants' invention was made to provide Olivieri et al. with the film that is joined to the other layers by means of extrusion to make up a composite film in order to secure the inner and outer layers together (col. 4 lines 19 to 20) as taught by Schlaeppi et al. Applicants traverse this statement for the reasons set out herein.

Schlaeppi et al. teaches not to include any tear notches in Schlaeppi et al.'s invention since manufacturing malfunctions of packages having notches can result in misplaced notches and the like that ruin the integrity of the packages with product spoilage and/or leaking. The combination of Schlaeppi et al. with Olivieri et al. would be against the teaching of Schlaeppi et al. Schlaeppi et al. directs away from the inclusion of any notches in Schlaeppi et al.' disclosed invention.

Neither Olivieri et al. nor Schlaeppi et al. teaches or suggests applicants' claimed invention. Olivieri et al. does not cure any of the defects of Schlaeppi et al. in the quest for applicants' claimed invention. The Examiner has not shown in the record that one ordinarily skilled in the art would have any reason or motivation

to combine Schlaeppli et al. and Olivieri et al. particularly in view of the fact that both rejection references direct away from applicants' claimed invention.

The Olivieri et al. process provides a film that has protruding rims around the openings of its perforations (on the laser side) with the problems resulting therefrom in its packages. All of the teachings of record must be considered under Section 103 and none can be ignored/eliminated without sufficient supporting reasons/facts in the record. Such reasons/facts are not present in the record.

The Examiner has not factually established a prima facie showing of obviousness in the record. Furthermore, applicants have factually rebutted any prima facie showing of obviousness.

This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims are requested.

Respectfully submitted,

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Date

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